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**OFFICE OF PETITIONS**

INTERVET INC  
PATENT DEPARTMENT  
PO BOX 318  
MILLSBORO DE 19966-0318

In re Application	:
Weston, et al.	:
Application No. 10/788,746	: DECISION ON APPLICATION
Filed: February 26, 2004	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. 1-1998.376 US D1	:

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)", filed October 19, 2007. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be increased from the currently accorded one hundred fifty-eight (158) days to two hundred (200) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent is being **HELD IN ABEYANCE** until after the actual patent date.

Patentees are given TWO (2) MONTHS from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentees may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

On July 20, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred fifty-eight (158) days. On October 19, 2007, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred fifty-eight (158) days based on an adjustment of two hundred ninety-five (295) days of PTO delay pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1), reduced by applicants' delays of sixty-one (61) and twenty-nine (29) days pursuant to 37 C.F.R. § 1.704(b), and forty-seven (47) days pursuant to 37 C.F.R. 1.704(c)(8). All periods of adjustment have been reviewed and found to be correct.

However, applicants assert additional PTO delay for the failure on the part of the Office to issue the patent within three years of its filing. The Office will be able to assess whether or not any additional PTA is accorded once the issue date is established.<sup>2</sup>

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **one hundred fifty-eight (158)** (295 days of PTO delay, reduced by 137 days of applicant delay).

The \$200 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 02-2334, as authorized.


The application is being forwarded to the Office of Patent Publication for processing into a patent.

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<sup>1</sup> Applicant filed the application for patent term adjustment together with the payment of the issue fee.

<sup>2</sup> Applicant should note that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period of pendency before the Office except for periods excluded under 35 U.S.C. (b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A).

Telephone inquiries specific to this matter should be directed to  
Cliff Congo, Petitions Attorney, at (571)272-3207.



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